

1 UNITED STATES BANKRUPTCY COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 In re: ] Case No. 97-59240-ASWSA  
4 ] Chapter 7  
5 RODGER DALE ODOM, ]  
6 Debtor. ]  
7 ]  
8 ANGELINE M. WALLER, ] Adv. Pro. No. 98-5043  
9 Plaintiff, ]  
10 vs. ]  
11 RODGER DALE ODOM, ]  
12 Defendant. ]  
13 ]

14 **MEMORANDUM DECISION**

15 **I. BACKGROUND**

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17 This matter came before the Court for trial on July 29, 1999  
18 on the complaint of Plaintiff Angeline M. Waller ("Plaintiff")  
19 against Defendant and Debtor Rodger Dale Odom ("Debtor"). In her  
20 complaint, Plaintiff, the former wife of the Debtor, asks the Court  
21 to except a divorce-related marital debt from Debtor's Chapter 7  
22 discharge, pursuant to § 523(a)(15) of the Bankruptcy Code.<sup>1</sup>

23 The marital debt at issue is a judgment by Bay Federal Credit

24  
25 <sup>1</sup>Unless otherwise noted, all statutory references are to the  
26 Bankruptcy Code, 11 U.S.C. section 101 et seq., and all "Rule"  
references are to the Federal Rules of Bankruptcy Procedure.

1 Union ("Bay Federal") against both Plaintiff and Debtor for credit  
2 card purchases made during their marriage. Upon the dissolution of  
3 the marriage, the Superior Court of the State of California ordered  
4 Debtor to hold Plaintiff harmless from liability for any Bay Federal  
5 debt. Thereafter, Debtor filed under Chapter 7 of the Bankruptcy Code  
6 and sought to have the Bay Federal debt discharged. Plaintiff brought  
7 this adversary proceeding to determine the dischargeability of this  
8 debt.

9 At trial, Bruce Lindsey, Esq. represented the Plaintiff and  
10 Merrill Zimmershead, Esq. represented the Debtor. Both Plaintiff  
11 and Debtor testified and submitted to cross-examination.

12 The following represents the Court's findings of fact and  
13 conclusions of law, pursuant to Rule 7052.

14 **II. FINDINGS OF FACT**  
15

16 Plaintiff and Debtor are former spouses. Together, they have  
17 one child -- Amy Odom, born on August 23, 1981 -- of whom they  
18 share legal custody.

19 On May 1, 1996, Plaintiff's petition for divorce was heard in  
20 the Superior Court. That Court entered a Dissolution of Marriage  
21 Judgment shortly thereafter, on May 31, 1996. Three subsequent  
22 orders, dated March 17, 1997, October 15, 1997 and October 16,  
23 1998, further modified the original judgment, addressing child  
24 support and custody issues, and the division of marital property  
25 and debts.

1 Under the judgment and subsequent orders, Plaintiff and Debtor  
2 received joint legal custody of their daughter, Amy, with primary  
3 physical custody being awarded to Plaintiff. Plaintiff also  
4 received an award of monthly child support in the amount of \$1,000,  
5 with the proviso that support cease when Amy reached the age of 18.

6 In dividing the marital property, the judgment awarded, and  
7 assigned all debts attached to, real property in Aromas, California  
8 to Plaintiff. Plaintiff also received a quitclaim deed from the  
9 Debtor, which relinquished his rights in the Aromas property. Debtor,  
10 in turn, received real property in San Juan Bautista, California  
11 ("Chittenden"). Plaintiff was to assume responsibility for all  
12 payments past due on Chittenden's first mortgage; Debtor was to assume  
13 responsibility for payments due on Chittenden's first mortgage for the  
14 month of May 1996 only, and back payments for the property's second  
15 and third mortgages. Debtor was awarded properties in Arizona, and  
16 Plaintiff provided quitclaim deeds that relinquished any interest that  
17 she might have in those properties.

18 The judgment divided the marital debt as follows: Plaintiff  
19 was to hold Debtor harmless from liability for the First Union and  
20 Shell credit cards; Debtor was to hold Plaintiff harmless from  
21 liability for the Bay Federal VISA credit card.

22 On December 10, 1996, Bay Federal filed a complaint in California  
23 Municipal Court against both the Plaintiff and Debtor, alleging that:  
24 they had received a VISA line of credit on October 23, 1991; they had  
25 defaulted on their installment payments; and Bay Federal was

1 exercising its right to accelerate the entire balance due on the  
2 contract. Subsequently, on May 15, 1997, Bay Federal obtained a  
3 default judgment of \$15,043.35 against both Debtor and Plaintiff.

4 On October 31, 1997, Debtor filed a petition for relief under  
5 Chapter 7 of the Bankruptcy Code. As of that time, Debtor had  
6 made no payments toward the Bay Federal judgment which had been  
7 assigned to him in the divorce; instead, Debtor attempted to  
8 discharge this debt in his bankruptcy case.

9 On February 6, 1998, Plaintiff filed the instant Adversary  
10 Proceeding, alleging that the Bay Federal judgment was  
11 nondischargeable in Debtor's bankruptcy pursuant to § 523(a)(15) of  
12 the Bankruptcy Code.

13 At trial, both Plaintiff and Debtor introduced into evidence  
14 exhibits which detailed their respective finances from January 1998  
15 to March 29, 1999. This evidence is contained in two California  
16 Judicial Counsel Forms: Form 1292.11, entitled Schedule of Assets and  
17 Debts and Form 1285.50, entitled Income and Expense Declaration.  
18 These Forms and the parties' testimony constituted the bulk of  
19 evidence before the Court.

#### 20 **Debtor's Income and Expenses**

21 Debtor is currently a roofing contractor with California  
22 Roofing Company, Inc., where he has been employed since February of  
23 1996. His gross annual income for 1998 was \$70,000, or an average  
24 of \$5,833 per month. Debtor testified that his gross income for  
25 1999 is less, approximately \$4,400 per month. Debtor explained that  
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1 he had received a work-related bonus for 1998, but not yet for the  
2 current year. Because issuing the bonus is solely within his  
3 employer's discretion, Debtor could not predict if he would receive  
4 one for the current year. Nor could the Debtor determine the  
5 amount of a potential one since any bonus would be based on the  
6 company's annual profits, which varied from year to year.

7 In addition to a potential work-related bonus, Debtor excluded  
8 two items from his current gross monthly income: a monthly stipend  
9 of \$500, which Debtor received from his employer for work-related car  
10 expenses, and rental income in the amount of \$975. Debtor testified  
11 that he does not consider the \$500 car stipend to be income because  
12 it simply compensates Debtor for the work-related use of his vehicle.  
13 He also believes the depreciation of his vehicle, which results from  
14 extensive work-related use, far exceeds the amount of this \$500  
15 stipend. He testified that the subject vehicle, a 1996 Dodge truck,  
16 has some 213,000 miles on the odometer, and will soon have to be  
17 replaced at Debtor's own expense. As to the rental income, Debtor  
18 testified that he is currently renting a mobile home to a Ms. Cindy  
19 Turner, from whom he receives \$975.00 a month in rent "when she pays."  
20 In the past, Debtor has rented this mobile home to other tenants, with  
21 rent ranging from \$800.00 to \$950.00 a month.

22 Debtor presented his current monthly expenses -- all of which  
23 were unchallenged by the Plaintiff:

24 Mortgage	\$ 1950.00
25 Homeowner's insurance	\$ 123.00
26 Chrysler Credit	

1	(car payment for 1994 Dodge Truck)	\$	389.00
	Food and Household Supplies	\$	250.00
2	Food (Eating Out)	\$	50.00
	Utilities	\$	125.00
3	Telephone	\$	75.00
	Laundry	\$	50.00
4	Clothing	\$	75.00
	Entertainment	\$	50.00
5	Transportation and Auto Expenses	\$	100.00
6	Court-ordered Child Support	\$	1000.00
7	<b>TOTAL MONTHLY EXPENSES . . . . .</b>	<b>\$</b>	<b>4,237.00</b>

8  
9 Debtor also presented evidence as to his assets which, along with  
10 any encumbrances, are as follows:

Description of Asset	Current Fair Market Value of Asset	Amount of Money Owed or Encumbrance
1991 Chittenden Pass San Juan Bautista, CA	\$ 326,000	\$ 310,000
Living Room Furniture Washer and Dryer Refrigerator	\$ 1,000	\$ 2,800
1994 Dodge Pickup	\$ 3,000	\$ 3,000
TOTAL	\$ 330,000	\$ 315,800
NET EQUITY	\$ 14,200	

**Plaintiff's Income and Expenses**

1 Plaintiff is currently a bookkeeper with Sakata Ranches, Inc.,  
2 where she has been employed since January 1988. She also has a  
3 small tax preparation business. Her total gross annual income for  
4 1998 from both sources was \$34,698, or an average of \$2,891.50 a  
5 month. Plaintiff testified that the tax preparation business is  
6 insubstantial, grossing a modest \$698 for 1998; she predicted that  
7 future gross earnings will be less than \$1,000 per year.

8 Plaintiff's current gross monthly income, which includes income  
9 from her tax business, is only \$ 2,000. Plaintiff testified that  
10 her average gross monthly income for 1998 was considerably higher  
11 than currently because she received vacation pay in the amount of  
12 \$1,000 in exchange for forgoing any vacation time, and she received  
13 severance pay in the amount of \$7,000 when her job was terminated on  
14 December 31, 1998. Her termination resulted from her employer's  
15 decision to implement a computerized system. However, because of  
16 Plaintiff's knowledge about the location of files and other data,  
17 she has remained on a month-to-month basis only.

18 Plaintiff testified that, because she expects to be terminated,  
19 she continues to search for other employment. As a high school  
20 graduate with no college degree, Plaintiff explained that job  
21 prospects in her field are limited because, with the increasingly  
22 competitive job market, candidates without computer training or  
23 other advanced degrees, such as a C.P.A. or B.A. degree, are  
24 severely disadvantaged.

25 Plaintiff lists her current monthly expenses as follows:  
26

1 1<sup>st</sup> Mortgage - \$ 492.00  
 (held by CoAmerica)  
 2 2<sup>nd</sup> Mortgage -  
 3 (held by Plaintiff's Parents, Mr. And Mrs. Waller) \$ 377.00

4	Sum Total of Mortgage Payments:	\$ 869.00
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5	Real Property Taxes	\$ 30.00
6	Homeowner's Insurance	\$ 68.00
	Medical and Dental Expenses	\$ 60.00
7	Child's Education	\$ 400.00
	Food and Household Supplies	\$ 200.00
8	Utilities	\$ 105.00
	Telephone	\$ 35.00
9	Laundry and Cleaning	\$ 40.00
	Clothing	\$ 225.00
10	Transportation and Auto Expenses	\$ 372.00
	Wells Fargo Bank (Credit Card)	\$ 58.00
11	Bank of the West (Motor home)	\$ 226.00
	CoAmerica (1995 Toyota)	\$ 375.00
12	TOTAL MONTHLY EXPENSES . . . . .	\$ 3,063.00

13  
 14 Plaintiff's assets along with encumbrances are as follows:

15	<u>Assets</u>	<u>Fair Market Value</u>	<u>Encumbrances</u>
16	1971 Silvercrest	\$ 105,200.00	\$ 12,500.00
17	Mobile Home 18475		1 <sup>st</sup> Mortgage (CoAmerica)
18	Rea Ave., Aromas, CA		\$ 58,000.00
19			2 <sup>nd</sup> Mortgage
20			(Plaintiff's Parents)
21			\$ 23,000.00
22			3 <sup>rd</sup> Mortgage
			(Plaintiff's Fiancé)
			Judgment Lien
			(Bay Federal)
23	Furniture	\$ 1,000.00	
	1988 Izuzu I Mark	\$ 400.00	
24	1987 EMC Motor home	\$ 10,000.00	\$ 8,000.00
	1995 Toyota Pickup	\$ 10,000.00	\$ 8,000.00
25	Savings Account	\$ 1,000.00	
26	Checking Account	\$ 100.00	



1 Tax Refund \$ 5,000.00  
Mutual Fund \$ 1,000.00  
2 IRA \$ 21,000.00  
Tax Business(Equip) \$ 1,000.00  
3 Hot Tub \$ 150.00  
Horsewalker \$ 750.00  
4 2 Horses<sup>2</sup>

5 TOTAL	\$ 156,600.00	\$ 109,500.00
6 NET EQUITY	\$ 47,000.00	

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9 **III. APPLICABLE LAW**

10 § 523(a)(15), which governs the circumstances under which a  
11 marital obligation will be exempted from discharge, provides:

12 (a) A discharge under . . . this title does not discharge  
13 an individual debtor from any debt --  
14 (15) not of the kind described in paragraph (5) that is  
15 incurred by the debtor in the course of a divorce or  
separation or in connection with a separation agreement,  
divorce decree or other order of a court of record. . .  
unless --

16 (A) the debtor does not have the ability to pay such debt  
17 from income or property of the debtor not reasonably  
necessary to be expended for the maintenance or support of  
debtor or a dependent of the debtor...; or

18 (B) discharging such debt would result in a benefit to the  
19 debtor that outweighs the detrimental consequences to a  
spouse, former spouse, or child of the debtor.

20 The statutory language of § 523(a)(15) excludes from its reach  
21 support-related marital debt as described in § 523(a)(5); therefore,  
22 a necessary first step in analyzing § 523(a)(15) is to determine  
23 whether a marital debt is support or non-support. If the marital debt

24  
25 <sup>2</sup> Plaintiff did not indicate the value of these 2 horses in her exhibit. However, Plaintiff did testify  
26 that both horses belonged to her daughter.

1 is deemed to be in the nature of support, such as child or spousal  
2 support, then such debt will be nondischargeable pursuant to  
3 §523(a)(5). If the debt is determined to be non-support, however,  
4 then such debt will be nondischargeable pursuant to §523(a)(15) unless  
5 the debtor can show either: (1) under subsection (A), the inability to  
6 pay; or (2) under subsection (B), that the benefit to the debtor of  
7 discharge outweighs the harm to the ex-spouse. The importance of the  
8 distinction between support and non-support marital debt is clear:  
9 the former is nondischargeable under § 523(a)(5) without further  
10 inquiry; the latter is nondischargeable under § 523(a)(15) unless the  
11 debtor can satisfy either of the two exceptions under subsections (A)  
12 or (B).

13 In determining whether a marital debt is in the nature of  
14 support, the court "must look beyond the language of the decree to the  
15 intent of the parties and to the substance of the obligation."  
16 Shaver v. Shaver, 736 F.2d 1314, 1316-17 (9<sup>th</sup> Cir. 1984) ("Shaver").  
17 In Shaver, the Court of Appeals listed several factors to be  
18 considered in characterizing a marital debt as support-related:

19 ...If an agreement fails to provide explicitly for  
20 spousal support, a court may presume that a so-called  
21 "property settlement" is intended for support when the  
22 circumstances of the case indicate that the recipient  
23 spouse needs support. See Stout v. Prussel, 691 F.2d  
24 859, 861 (9<sup>th</sup> Circuit 1982). Factors indicating that  
25 support is necessary include the presence of minor  
26 children and an imbalance in the relative income of the  
parties. In re Woods, 561 F.2d 27, 30 (7<sup>th</sup> Cir. 1977).  
Similarly, if an obligation terminates on the death or  
remarriage of the recipient spouse, a court may be  
inclined to classify the agreement as one for support.  
Id.; see also Matter of Albin, 591 F.2d 94 (9<sup>th</sup> Cir.  
1979); In re Ferradino, 14 Bankr.N.D.Ga.1980). A

1 property settlement would not be affected by the  
2 personal circumstances of the recipient spouse; thus a  
3 change in those circumstances would not affect a true  
4 property settlement, although it would affect the need  
5 for support. The court will look also to nature and  
6 duration of the obligation to determine whether it is  
7 intended as support. Support payments tend to mirror  
8 the recipient spouse's need for support. Thus, such  
9 payments are generally made directly to the recipient  
10 spouse and are paid in installments over a substantial  
11 period of time. Matter of Albin, 591 F.2d 94, 97 (9<sup>th</sup>  
12 Cir. 1979); In re Smith, 436 F. Supp. 469 (N.D.Ga.  
13 1977).

14 Additionally, the bankruptcy court is not bound by the state  
15 court's characterization of a marital debt as support-related.  
16 Rather, the "federal interests reflected in the Bankruptcy Act"  
17 require an independent determination of the nature of the marital  
18 obligation. Shaver at 1316 citing Erspar v. Badgett, 647 F.2d 550 (5<sup>th</sup>  
19 Cir. 1981), cert. denied, 455 U.S. 945, 102 S.Ct. 1443, 71 L.Ed.2d 658  
20 (1982).

21 If the debt is deemed to be non-support, then its  
22 dischargeability is governed by § 523(a)(15), which provides that non-  
23 support related debt will be dischargeable if (1) debtor is unable to  
24 pay the debt; or (2) the benefit of discharge outweighs the harm to  
25 the ex-spouse. In this case, neither party contends that the subject  
26 debt is in the nature of support under § 523(a)(5), and both presented  
evidence only with respect to the dischargeability of the debt under  
§ 523(a)(15).

Neither the Code nor the legislative history provide any guidance  
on the test for determining Debtor's ability to pay, the factors to  
consider in balancing the hardships, and the question of who -- Debtor

1 or ex-spouse -- bears the burden of proof for each of the two  
2 exceptions under § 523(a)(15). However, the Ninth Circuit Bankruptcy  
3 Appellate Panel ("BAP") recently established the analytical framework  
4 for determining the dischargeability of marital debt under  
5 § 523(a)(15) in In re Jodoin, 209 B.R. 132 (9<sup>th</sup> Cir. BAP 1997)  
6 ("Jodoin").

7 Analyzing the first exception under § 523(a)(15) -- Debtor's  
8 inability to pay -- the BAP in Jodoin adopted an expanded view of the  
9 "disposable income" test of § 1325(b)(2). Id. at 142. Under the  
10 disposable income test, the court asks "[w]hat funds are available to  
11 the Debtor to pay the obligation after deducting 'reasonably  
12 necessary' expenses". Id., quoting Dressler v. Dressler, 194 B.R.  
13 290, 304 (Bankr.D.R.I. 1996) ("Dressler"). The BAP cautioned, however,  
14 that a "proper application of [the disposable income test] should take  
15 into account the prospective income that the debtor should earn [as  
16 well as] the debtor's reasonable expenses." Id. Such an approach,  
17 reasoned the BAP, would allow court scrutiny of manipulative behavior  
18 on the part of debtors, who might be tempted to "sacrifice their own  
19 financial well-being to spite their ex-spouse." Id. If the debtor can  
20 satisfy the inability to pay exception of § 523(a)(15)(A), pursuant to  
21 the disposable income test, the Court will discharge the marital  
22 obligation.

23 Where the debtor cannot prove inability to pay, the marital  
24 obligation will still be discharged if debtor can prove that the  
25 benefit of discharge outweighs the harm to the ex-spouse. This is  
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1 essentially a fact-based inquiry, which "primarily focuses upon the  
2 total economic situation of the parties in their new lives." Id. at  
3 143.

4 In analyzing both the ability to pay and the balance of the  
5 hardships test, the BAP in Jodoin adopted the majority view that the  
6 appropriate time for analyzing the ability to pay and hardship tests  
7 is the date of trial. The BAP reasoned that "...§ 523(a)(15)  
8 instructs us to look out the windows. It calls for a 'current  
9 circumstances' review of non-support divorce obligations and the  
10 consequences of discharge upon them." Id. at 142 quoting Dressler at  
11 300.

12 The BAP also adopted the majority approach with respect to the  
13 allocation of burdens, holding that the debtor had the burden of proof  
14 with respect to both the inability to pay and the balance of the  
15 hardships tests. Id. at 141. The BAP reasoned that the statutory  
16 structure of § 523(a)(15) creates an exception within an exception:  
17 non-support obligations are excepted from discharge pursuant to  
18 § 523(a)(15), but, within that exception, some marital debts are  
19 excepted from nondischargeability if either the ability to pay or the  
20 balance of hardships tests is met. Id. at 141. The BAP drew an  
21 analogy between the "exception within an exception situation" of  
22 § 523(a)(15) and the case of Hill v. Smith, 260 U.S. 592, 43 S.Ct.  
23 219, 67 L.Ed. 419 (1923), wherein the Supreme Court held "that the  
24 party claiming the exception to a statutory provision is required to  
25 prove the exception." Id.

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**IV. Discussion**

In order to have the Bay Federal debt discharged, the Debtor must prove either: (1) under subsection (A), the inability to pay the debt; or (2) that the benefit of discharging the debt will outweigh the harm to the Plaintiff.

**A. Debtor's Ability to Pay Under Subsection (A) of § 523(a)(15)**

To prevail under subsection (A), Debtor must demonstrate an inability to pay as measured by the "disposable income" test of § 1325; that is, Debtor must show inability to pay the debt and reasonably necessary expenses.

With respect to Debtor's current disposable income, Debtor testified that his gross income for 1998 was \$70,000, or an average of \$5,833 a month. Debtor also testified that he hopes to earn close to his 1998 gross income of \$70,000 for the current year. Currently, however, Debtor has a gross monthly income of \$4,400. Out of this \$4,400, Debtor must pay monthly expenses of \$4,237, leaving a disposable monthly income of \$163. The Court notes that Plaintiff did not challenge any of these expenses as being unreasonable.

Debtor's alleged disposable monthly income of \$163 is considerably understated. Two sources of income, both excluded from Debtor's monthly income, demonstrate that Debtor's disposable income is actually much higher. The first source of income is monies which Debtor receives from the rental of a mobile home on his property.

1 Debtor testified that he receives \$975 a month from his current  
2 tenant, "when she pays." Although Debtor failed to specify how  
3 often he received this rental income, he testified that, in the  
4 past, he has rented this mobile home to other tenants for between  
5 \$800 and \$950 a month. Debtor provided no evidence of his expenses  
6 for maintaining this property.

7 Secondly, Debtor was required to pay \$1,000 in monthly child  
8 support pursuant to a state court order. However, since August 23,  
9 1999, when Debtor's child turned 18, Debtor was no longer be  
10 obligated under court order to provide such support. Therefore,  
11 Debtor's disposable income is now increased by \$1,000 per month.

12 Adding the terminated monthly child-support payments of \$1,000  
13 to Debtor's alleged disposable monthly income of \$163 produces a total  
14 disposable monthly income of \$1,163. Adding the rental income of \$975  
15 to this total would yield an even more generous disposable monthly  
16 income of \$2,138.

17 Given that the Court finds Debtor's disposable monthly income  
18 to be at least \$1,163, and possibly close to \$2,138, Debtor has  
19 failed to demonstrate inability to pay under subsection (A) of  
20 § 523(a)(15).

21 **B. Balancing the Hardships**  
22 **Between the Debtor and Plaintiff**  
**under Subsection (B) of § 523(a)(15)**

23 Notwithstanding his ability to pay the Bay Federal debt, Debtor  
24 may still prevail if he can meet the requirements of subsection (B);  
25 namely, that the benefit to him from discharge outweighs the  
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1 detrimental consequences to the Plaintiff.

2       In balancing the hardships between Debtor and Plaintiff, the  
3 Court examines the total economic circumstances of each party  
4 in their new lives.

5       There is a wide disparity between the parties' incomes, and  
6 consequently, in their respective ability to shoulder the burden.  
7 While the Debtor enjoys a disposable monthly income of between \$1,163  
8 and \$2,138, Plaintiff, with a gross monthly income of \$2,000 and  
9 monthly expenses of \$3,063.00, has no disposable income. Rather,  
10 Plaintiff has a sizeable monthly deficit of \$1,063.

11       Second, while the Plaintiff's financial future is problematic  
12 at best, the Debtor's financial future includes steady income from  
13 employment as a contractor, a position he has held since February  
14 of 1996. By stark contrast, Plaintiff, as a month-to-month  
15 employee, is subject to termination at any time. Moreover, given  
16 Plaintiff's lack of education, Plaintiff will likely find it difficult  
17 to locate other employment. Coupled with the lack of a monthly  
18 disposable income -- indeed, Plaintiff's financial situation shows  
19 a monthly deficit -- Plaintiff's reduced opportunities for finding  
20 employment indicate that she will suffer the greater hardship if  
21 the Bay Federal debt is discharged. Debtor, on the other hand,  
22 receives steady income as a roofing contractor and, as of 1998,  
23 earned a gross annual income of \$70,000. In addition, Debtor may  
24 receive a work-related bonus which could raise his income for 1999  
25 up to, or in excess of, that for 1998.

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1 A third consideration in the balancing of hardships is available  
2 income from the parties' new relationships or spouses. Although both  
3 parties maintain new relationships in the aftermath of their divorce,  
4 the evidence suggests that these new partners are not contributing  
5 significantly to either party's household. Plaintiff testified that  
6 her fiancé only contributes half of the food for the household; all  
7 of their other finances are kept separate. Similarly, Debtor  
8 testified that his fiancée, who works for his employer and earns an  
9 hourly wage of \$10, has not yet contributed to Debtor's household.

10 Based on all of these factors, the Court concludes that the  
11 discharge of the Bay Federal debt would impose a burden on the  
12 Plaintiff that far outweighs the benefit to the Debtor if the debt  
13 were discharged as to him. Since the Debtor has failed to satisfy  
14 the balance of hardships test under subsection (B), the Bay Federal  
15 debt is nondischargeable under § 523(a)(15)(B).

16 **Conclusion**

17 For the foregoing reasons, Debtor's obligation to pay the Bay  
18 Federal Judgment, a non-support marital obligation, is  
19 nondischargeable pursuant to § 523(a)(15). Debtor has failed to  
20 carry his burden of proving either an inability to pay under  
21 subsection (A) or that the benefit of discharge would outweigh the  
22 detriment to the Plaintiff under subsection (B). Counsel for the  
23 Plaintiff is directed to prepare a form of order and submit it to  
24 the Court after having presented it for review as to form and  
25 substance upon counsel for the Debtor.

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1 DATED:

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ARTHUR S. WEISSBRODT  
UNITED STATES BANKRUPTCY JUDGE

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